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Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

Criminal Revision NO. 187 /2006

APPLICANT	**Sanjeev Kumar @ Sanju Thakur,**
(IN JAIL)	**S/o. Ashok Thakur, aged about 25 years,**
	R/o. Shitala Chowk, Thakurpara,
	Kawardha, Tahsil–Kawardha, District
	Kabridham (C.G.)

1332/06

VERSUS

Filed on 22/3/06

by Shri B.K. Sahu Advocate

22/3/06

R. to D.R. (J)

RESPONDENT	**State of Chhattisgarh**
	Through P.S. Kawardha,
	District - Kabirdham

CRIMINAL REVISION UNDER SECTION 397 READ WITH 401 OF CRIMINAL PROCEDURE CODE

(45)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Revision No.187/2006

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Sanjeev Kumar @ Sanju Thakur

Versus

State of Chhattisgarh

Post for order: 8.5.06

Sd-/
Dilip Raosaheb Deshmukh
Judge

(46)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Revision No.187/2006

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Sanjeev Kumar @ Sanju Thakur

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State of Chhattisgarh

Shri Ajit Singh, learned counsel for the applicant.
Shri Ashish Shukla, Govt. Advocate for the State.

ORDER

(Passed on 8th of May-2006)

Being aggrieved by the judgment dated 08-03-2006 delivered by Shri G.L.Sonwani, Additional Sessions Judge, (F.T.C.), Kabir Dham, Kawardha in Criminal Appeal Number-05/2006 whereby the conviction of the appellant under Sections-420,467,468 of the IPC and the sentence of rigorous imprisonment for 1 year and to a fine of Rs.1,000/-, in default of payment of fine to undergo additional rigorous imprisonment for 15 days under Section-420 of IPC, rigorous imprisonment for 2 years and to a fine of Rs.2,000/-, in default of payment of fine to undergo additional rigorous imprisonment for 1 month under Section-467 of IPC and rigorous imprisonment for 1 year and fine of Rs.1,000/-, in default of payment of fine to undergo additional rigorous imprisonment for 15 days under Section-468 of the IPC awarded by Shri Harish Kumar Awasthi, Judicial Magistrate First Class, Kawardha (Kabir Dham) in Criminal Case Number-230/2005 vide judgment dated 29-12-2005 was affirmed, the appellant has preferred this Criminal Revision. All the sentences were ordered to run concurrently.

2. In this Criminal Revision, it is not disputed that the applicant is the son of co-accused Ashok Kumar Thakur who was acquitted by the learned trial Judge of the aforesaid charges. Learned counsel for the applicant fairly conceded that all the Questioned signatures Q-1 to Q-29 on withdrawal forms bear the signature of the applicant Sanjeev Kumar who withdrew the amounts mentioned in the withdrawal forms from the Zila Sahakari Kendriya Bank Maryadit, Rajnandgaon between 29-02-2000 to 27-08-2001.

3. Briefly stated the factual matrix is that Shri R.P.Sharma, Sub Enginner, Public Works Department, Kawardha had a deposit of Rs. 1 Lakh in the Savings Account Number-1253, ledger folio Number-367/4 in the aforesaid bank. He entrusted the pass book to Ashok Kumar Thakur for buying National Savings Certificate. Ashok Kumar Thakur did not return the pass book to him and in collusion with the applicant got the signatures of Shri R.P.Sharma forged on withdrawal forms and withdrew a sum of Rs.90,000/- from the aforesaid account. In February-2001 when Shri R.P.Sharma needed money for marriage of his daughter, he learnt on making enquiries that only Rs.268/- was lying in balance in his account. F.I.R. was lodged on 27-08-2001 vide Ex.P-19. Withdrawal forms Article-1 to Article-29 were seized by the police from bank. Specimen writings of Shri R.P.Sharma, Ashok Kumar Thakur and the applicant were taken and sent for comparison to expert of Questioned Documents, Police Headquarter, Raipur who vide report Ex.P-64 authoritatively opined that the signatures on withdrawal forms Q-3 to Q-6, Q-9 to Q-39 and Q-42 to Q-62 were not signed by Shri R.P.Sharma since they did not match with his specimen signatures S-1 to S-26. However, it was not possible to express any definite opinion regarding the authorship of the aforesaid Questioned Documents on

the basis of the available data. It was also opined that the withdrawal form for Rs. 35,000/- dated 29-02-2000 bearing signatures of Shri R.P.Sharma Q-1 to Q-2, withdrawal form dated 13-04-2000 for Rs.3,000/- bearing signatures of Shri R.P.Sharma as Q-7, withdrawal form dated 22-04-2000 for Rs.4,000/- bearing signatures of Shri R.P.Sharma as Q-8, withdrawal form dated 09-06-2000 for Rs.10,000/- bearing signatures of Shri R.P.Sharma as Q-40 & Q-41 and withdrawal form dated 27-08-2001 for Rs.10,000/- bearing signatures of Shri R.P.Sharma as Q-63 to Q-65 were signed by Shri R.P.Sharma since the signatures matched with his specimen signatures. It was also opined that Q-66 to Q-114 being the signatures on the back of the withdrawal forms were signed by the applicant herein since they matched with his specimen signatures A-1 to A-50.

4. The prosecution examined as many as 14 witnesses. Relying upon the evidence led by the prosecution, the learned trial Judge convicted and sentenced the applicant as aforesaid in para-1 on the ground that the applicant regularly withdrew money from the bank on the basis of withdrawal forms signed by Shri R.P.Sharma and for that reason the bank officials had trusted that the transactions of withdrawal by the applicant were genuine. The report of the Additional State Examiner of Questioned Documents clearly revealed that the withdrawal forms Q-3 to Q-6, Q-9 to Q-39 and Q-42 to Q-62 were not signed by Shri R.P.Sharma. It was also established that the applicant had withdrawn the money from the bank on the basis of withdrawal forms duly signed by him on back as a bearer of the withdrawal form. No explanation whatsoever was given by the applicant as to how he came in possession of the withdrawal forms and to whom the money was paid by him.

Co-accused Ashok Kumar Thakur was acquitted by the trial Court for want of any evidence to show that he ever went to bank for withdrawal of the amounts. The learned Sessions Judge agreeing with the findings recorded by the learned trial Judge affirmed the conviction and sentence and dismissed the appeal.

5. Learned counsel for the applicant has at the very outset submitted that he would not dispute that through withdrawal forms Article-1 to Article-29, the applicant had withdrawn the amounts mentioned therein as bearer from the bank. It was contended that since the withdrawal forms were given by his father Ashok Kumar Thakur to the applicant, he simply went to the bank and withdrew the amount and delivered the money to his father. The applicant had thus no *mens rea* that the withdrawal forms were forged. It was also argued that there was no evidence to show that the applicant had forged the signatures of Shri R.P.Sharma on the withdrawal forms. The report of the Additional State Examiner for Questioned Documents also did not prove this fact. On these premises, it was argued that conviction of the applicant under Sections-420, 467 & 468 of the IPC was wholly illegal and liable to be set aside. Reliance was placed on ***Ram Narayan Popli Vs. C.B.I.*** reported in **(2003) 3 Supreme Court Cases 641** and ***Kanchansingh Dholaksingh Thakur Vs. State of Gujrat*** reported in **A.I.R.-1979 -Supreme Court-1011.** On the other hand, Shri Ashish Shukla, learned Govt. Advocate argued in support of the impugned judgment.

6. Having considered the rival submissions and the case law cited by learned counsel for the parties, I have perused the record carefully. Section-420 deals with cheating and dishonestly inducing delivery of property. The offence of cheating is made of two ingredients: deception of any person and fraudulently or dishonestly

inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing the person. To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself. Section-467 relates to forgery of such documents as valuable securities and of other documents mentioned. Section-468 deals with forgery for the purpose of cheating. The offence is complete as soon as there was forgery with a particular intent.

7. The report of the Additional State Examiner for Questioned Documents Ex.P-64 and the testimony of Shri R.P.Sharma PW-12 and Shri P.C.Trivedi PW-13 leave no room for any doubt that the withdrawal forms Q-3 to Q-6, Q-9 to Q-39, Q-42 to Q-62 were not signed by Shri R.P.Sharma. It is not the case of the applicant that Shri R.P.Sharma had given the withdrawal forms to him for encashment. Similarly, the abovementioned documentary and oral evidence leave no room for any doubt that the applicant Sanjeev Kumar had withdrawn the amounts from bank on different dates after signing the withdrawal forms vide Q-1, Q-2, Q-7, Q-8, Q-40, Q-41 & Q-63, Q-65. The applicant has also admitted this fact. It is thus proved beyond any shadow of doubt that the applicant had withdrawn the amounts from the account of Shri R.P.Sharma PW-12 in the Zila Sahakari Kendriya Bank Maryadit, Rajnandgaon, after signing the withdrawal forms on the back vide the aforesaid

signatures. It was for the applicant to show how he came into possession of the withdrawal forms. There is also nothing on record to show that the applicant had delivered the money to Shri R.P.Sharma. It is also not the case of the applicant. The testimony of Shri Vijay Kumar Chandrawanshi PW-9 also proves the factum of withdrawal of the money from the bank account of Shri R.P.Sharma PW-12 by the applicant Sanjeev Kumar by producing withdrawal forms

8. The question that arises for consideration is whether the applicant had forged the signatures of Shri R.P.Sharma on the withdrawal forms or not and if yes, what offences were proved against the applicant. It is true that the Additional State Examiner Shri P.C.Trivedi PW-13 has not been able to express any definite opinion regarding the authorship of signatures of Shri R.P.Sharma PW-12 on withdrawal forms Q-3 to Q-6, Q-9 to Q-39, and Q-42 to Q-62. However, since the applicant has admitted the fact of withdrawal of the amounts from the bank account of Shri R.P.Sharma by signing the withdrawal forms on the back as a bearer it was for the applicant to show how he came in possession of the withdrawal forms. So far as the acquitted co-accused Ashok Kumar Thakur is concerned, I have perused his specimen signatures Ex.P-58 to P-63. There is not even an iota of doubt that acquitted co-accused Ashok Kumar Thakur could not have forged the signatures of Shri R.P.Sharma since he was paraplegic as is revealed in para-9 of the testimony of Shri R.P.Sharma. Thus, once the factum of signing withdrawal forms as bearer and withdrawal of the amounts from the account of Shri R.P.Sharma by the applicant Sanjeev Kumar is admitted and also a proved fact it was for the applicant Sanjeev Kumar to show how he came in possession of the withdrawal forms

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and to whom he delivered the money after withdrawing it from the bank through withdrawal forms as a bearer. Since, no material whatsoever is placed on record by the applicant, a presumption can safely be drawn that it was the applicant who forged the signatures of Shri R.P.Sharma on the withdrawal forms and then withdrew the amount from Zila Sahakari Kendriya Bank Maryadit, Rajnandgaon by signing as a bearer. I have also minutely perused the specimen signatures of the applicant Sanjeev Kumar who signed as R.P. Sharma vide Ex.P-52, P-53 and P-54. There is absolutely no doubt that it was the applicant who forged the signatures of Shri R.P.Sharma and withdrew the money from the bank. The applicant thus cheated by fraudulently or dishonestly inducing the bank authorities to deliver the amounts mentioned in the withdrawal forms to the applicant while the applicant knew that the signatures of Shri R.P.Sharma on the withdrawal forms were forged signatures. It is also established that the applicant forged the withdrawal forms which were valuable securities and also committed the offence of forgery for the purpose of cheating. Thus, the offences under Section-420, 467, 468 of the IPC are established beyond doubt against the applicant.

9. Having thus considered the material available on record, there is no illegality or manifest error in the impugned judgment. So far as the sentence awarded to the applicant by the learned trial Judge is concerned, being already lenient it does not call for any interference. Thus, no interference is called for in exercise of revisional jurisdiction. In the result, the revision being devoid of merit is dismissed.

Sd-/
Dilip Raosaheb Deshmukh
Judge